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August 29, 2019

President/Chief Executive Officer
Dairy Farmers of America, Inc.
800 West Tampa Street
Springfield, Missouri 65802

Registered Agent
CSC-Lawyers Incorporating Service CO.
221 Boliver Street
Jefferson City, Missouri 65101

Registered Agent-Kansas
Corporate Service Company
2900 SW Wanamaker Drive, Suite 204
Topeka, Kansas 66614

President/Chief Executive
Officer Dairy Farmers of America, Inc.
10220 North Ambassador Drive
Kansas City, Missouri 65153

President/Chief Executive Officer
Cabool Facility
Dairy Farmers of America, Inc.
950 Metrecal Trace
Cabool, Missouri 65689

US Environmental Protection Agency—
Washington DC
ATTN: EPA Administrator, Andrew Wheeler
1200 Pennsylvania Avenue NW
Washington, DC 20460

Sarah Parker-Pauley, Director
Missouri Department of Natural Resources
PO Box 176
1101 Riverside Drive
Jefferson City, MO 65102-0176

US Environmental Protection Agency—
Kansas City
11201 Renner Blvd.
Lenexa, Kansas 66219

RE: Notice of intent to Sue Dairy Farmers of America, Inc.
For violations of the Federal Clean Water Act, 33 U.S.C. 1251 et seq.

To Whom it May Concern:

On behalf of The City of Cabool, Missouri, (collectively, “Cabool”)we hereby notify you of The City of Cabool, Missouri’s intent to file civil action against Dairy Farmers of America, Inc. (collectively, “DFA”) in the U.S. District Court for the Western District of Missouri on or about the sixtieth (60) day following the date of this notice to abate DFA’s ongoing violations of the Clean Water Act (“CWA” or the Act”). This action is authorized by the CWA’s “citizen suit” provision, 33 U.S.C. § 1365, and will address DFA’s ongoing violations of the CWA’s prohibition on the discharge

of pollutants without compliance with the requirements of the Act, including the requirement to obtain an NPDES permit prior to discharge. See id. §§ 1311 (a); 1342. This notice identifies requirements of 33 U.S.C. §1365 (b) and 40 C.F.R. § 135.3.

A. Legal background: The Clean Water Act

The Clean Water Act, 33 U.S.C. §§ 1251 et seq., was enacted by Congress to “restore and maintain the chemical, physical and biological integrity of the Nation’s waters.” Id. § 1251 (a). The Act unequivocally prohibits the discharge of pollutants without explicit authorization. Id. § 1311 (a). One form of authorization is a permit issued under section 402 of the Act, which creates the National Pollutant Elimination System (“NPDES”). Id. § 1342(a). Section 402 authorizes the U.S. Environmental Protection Agency (“EPA”) or a State with an approved NPDES permit program to issue permits for the discharge of pollutants only where such discharge will, *inter alia*, ensure compliance with the applicable effluent limitations, water quality standards, and other substantive requirements and limitations established by the CWA. Id. Missouri has an EPA-approved NPDES permitting program, and the Missouri Department of Natural Resources (“DNR”) is the agency that issues NPDES permits to point-source dischargers within the State.

The CWA authorizes citizens to commence a civil action against any person, including any corporation, alleged to be in violation of the substantive requirements or prohibitions of the Act. 33 U.S.C. § 1365 (a) (1). Citizens may file suit in the appropriate federal district court to abate those violations and are authorized to seek injunctive relief, civil penalties, and an award of costs of litigation, including reasonable attorney fees. Id. §§ 1365 (a), (d). Before filing suit, citizens must provide and alleged violator with sixty (60) days’ notice of their intent to sue. Id. §§ 1365 (b) (1) (A).

1. The City’s permit to operate the Facility is current. See Exhibit A attached hereto and made a part hereof.
2. Defendant Dairy Farmers of America, Inc., (hereafter referred to as “DFA”) operates a dairy plant located at 950 Metrecal Trace Street in Cabool, Missouri in Texas County, Missouri.
3. DFA is permitted by the Missouri Department of Natural Resources to operate a wastewater treatment plant pursuant to the Missouri Clean Water Commission regulations, which current permit is effective from February 1, 2017 through December 31, 2021.
4. The City is located in Texas County, Missouri.
5. DFA is located in Texas County, Missouri and operates its plant facilities in Texas County, Missouri at 950 Metrecal Trace Street in Cabool, Missouri in Texas County, Missouri.

6. All of the activities related to the violations of the Act take place in Cabool, Missouri in Texas County, Missouri.
7. Cabool is located in the 25th Judicial Circuit Court's area of authority and in the Southern Division of the Western District of Missouri.
8. Federal and state regulations governing the operation of the DFA wastewater processing unit set the statutory and regulatory standards for which DFA is permitted to operate.
9. The standards for operation under DFA's permit from DNR are identified in Exhibit C attached hereto and made a part hereof.
10. In operating its wastewater treatment unit in the Cabool facility, DFA has discharged waste materials into the City's wastewater system on numerous occasions as noted hereafter without pre-treating such waste materials or inadequately pre-treating such waste materials. 2/12/2018, 2/13/2018, 3/22/2018, 4/9/2018, 4/12/2018, 4/13/2018, 4/24/2018, 4/29/2018, 5/1/2018, 5/10/2018, 5/15/2018, 6/11/2018, 8/2/2018, 10/1/2018, 10/2/2018, 2/6/2019, 2/8/2019, 2/13/2019, 2/14/2019, 6/13/2019, 6/14/2019, 6/28/2019, 7/12/2019, 7/16/2019 and 8/20/2019.
11. The standards for operation under DFA's permit from DNR are identified in Exhibit C attached hereto and made a part hereof establish a statutory legal duty of DFA to operate its wastewater facilities in such a way as not to cause injury to any person.
12. DFA is required as a part of its operating permit to pre-treat any waste materials that it discharges into the City's Facility.
13. DFA owes a statutory duty to the City to comply with its permit requirements before discharging its waste materials into the City's Facility.
14. DFA's discharge of its untreated waste materials into the City's Facility has caused and continues to cause significant injury to the City.

15. City officials and its contract professionals met with DFA officials including Jeff Inman on several occasions to identify DFA's discharge of the untreated waste materials and to identify the damages that the City Facility was suffering as a direct result of DFA's continuing discharge of the untreated waste materials.
16. DFA continued to discharge the untreated waste materials after the City officials identified the damages that the City Facility was suffering.
17. The City had its wastewater from the DFA plant discharges tested each time that the City's Facility operator and/or contractor detected the discharge of the untreated waste materials from DFA.
18. DFA was found to be in violation of its permit in the discharge of the untreated waste materials on or about July 31, 2019 after a DNR inspection conducted on July 16, 2019. See Exhibit B attached hereto and made a part hereof.
19. DFA's actions are intentional, willful, wanton and in complete disregard for and in direct contravention of its operating permit and the applicable governing laws establishing a statutory duty.
20. The City is a known and disclosed entity who will and is being injured by the DFA actions in discharging untreated wastewater from its plant.
21. DFA's actions continue up to this date and are in direct disregard to the City provided information and reporting of the discharge of the untreated waste materials.
22. DFA's continued discharge of the untreated waste materials has presented a critical challenge to the continued operation of the City's Wastewater Facility.

23. The City has had to invest in expensive mitigation technology and equipment to combat the significant discharge of the untreated waste materials by DFA so as to preserve the City's Facility's capability to operate.
24. Discharge of the untreated waste materials by DFA will cause the City to violate its operating permits by continued discharge of waste material into the municipal system.
25. The City has had to expend Four Hundred Thousand (\$400,000.00) dollars to date to protect its Wastewater Facility from the contamination created by the DFA discharges of the untreated waste materials.

B. Dairy Farmers of America Inc. Specific Clean Water Act Violations:

- (1) DFA violations of the discharge prohibition of 33 U.S.C. § 1342
- (2) DFA violations of the NPDES permit requirement of U.S.C. § 1342
- (3) Specific Dates of DFA violations (See Paragraph 10)

C. Parties Giving Notice are:

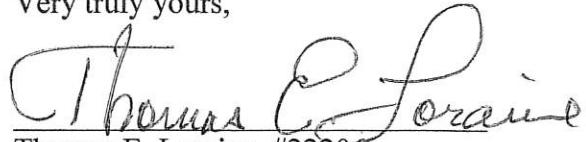
City of Cabool, Missouri
Attn: Ron Sheets, City Administrator
618 Main Street
Cabool, Missouri 65689

D. Conclusion

Should Cabool file suit, it will seek those remedies authorized by CWA's citizen suit provision, including the imposition of civil penalties totaling at least \$250,000.00 (to be calculated as \$10,000.00 multiplied by the number of days of violation of the CWA); injunctive relief sufficient to bring DFA into full and complete compliance with the CWA; an award of litigation costs, including reasonable and appropriate attorney fees under the circumstances.

If you have any information concerning the violations alleged in this Notice letter, please forward it to Cabool. Cabool is willing to discuss the violations alleged herein with representatives of DFA during the sixty-day notice period so that this matter may be resolved without resort to litigation. If however, those discussions do not take place or if the matter is not resolved to the satisfaction of Cabool, it will file suit on or about October 4, 2019.

Very truly yours,



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And



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TEL/jp

Enclosure(s)

Copies sent by certified mail to:

Missouri Department of Natural Resources
PO Box 176
1101 Riverside Drive
Jefferson City, MO 65102-0176

US Environmental Protection Agency—
Washington DC
ATTN: EPA Administrator, Andrew Wheeler
1200 Pennsylvania Avenue NW
Washington, DC 20460

US Environmental Protection Agency—
Kansas City
11201 Renner Blvd.
Lenexa, Kansas 66219

Thomas E. Horane